



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OTH, CNR, OLC, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenants have made two Applications for Dispute Resolution. One was made on November 14, 2024 and the other on November 15, 2024 (the “Tenants’ Applications”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order that the tenancy has ended due to a frustrated tenancy;
- an order that the Landlord comply with the *Act*;
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 11, 2024 (the “10 Day Notice”); and
- an order granting the return of the filing fee for both applications

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Background and Evidence

The parties agreed to the following; the Tenants listed in the Application are subtenants who signed a one year fixed term lease with individual listed as the Landlord in the Application, who is the original Tenant subleasing the rental unit to the subtenants, making her the landlord to the subtenants. The parties agreed that the tenancy started on July 1, 2024 and is meant to continue at least until July 1, 2025. The parties agreed that the subtenants are required to pay rent in the amount of \$2,400.00 due on the first day of each month. The subtenants have not yet paid a security deposit.

The parties agreed that they all signed the fixed term tenancy agreement on June 13, 2024. A copy of the tenancy agreement has been submitted into evidence. The parties agreed that subtenant E.R. changed her mind and notified the Landlord that she wishes to end her agreement due to conflict with the other subtenant. The parties confirmed that subtenant P.A. moved into the rental unit as intended.

During the hearing, subtenant E.R. stated that she would like a finding made to determine if she is responsible to the tenancy agreement she entered into, without having ever occupied the rental unit.

The Landlord stated that she only received \$1,200.00 of the required \$2,400.00 on July 1, 2024 as a result of E.R. not occupying the rental unit and not paying her portion of the rent. The Landlord stated that she was able to assist P.A. in finding a new roommate under a separate agreement who started paying \$1,000.00 beginning August 1, 2024. As such, the subtenants have been paying rent in the amount of \$2,200.00 since August 1, 2024 instead of \$2,400.00 as required in the original tenancy agreement between the parties. The Landlord stated that in addition to the \$1,200.00 loss in July 2024 rent, the subtenants have subsequently failed to pay \$200.00 for August, September, October, November, and December 2024 amounting to a loss of \$2,200.00.

The Landlord stated that she subsequently served a 10 Day Notice to the subtenants on November 12, 2024 by email. The subtenants confirmed receipt on the same date. The 10 Day Notice states that the subtenants have failed to pay rent in the amount of \$1,200.00 which was due on July 1, 2024. The Landlord stated that she is not seeking to end the tenancy, however, is seeking a monetary order for the loss of rent in the amount of \$1,200.00 for July rent, and \$200.00 for the proceeding five months totalling \$2,200.00 in loss of rent.

Subtenant E.R. stated that she feels as though the rent is not owed as she provided notice to the Landlord that she would not be moving into the rental unit, did not collect keys, or pay deposit, and has no intentions of occupying the rental unit.

Subtenant P.A. stated that the Landlord had agreed to only charge her \$1,200.00 a month and that the Landlord found a different subtenant to rent the other room which was not being occupied by E.R. The Landlord denied that the parties had any other agreement aside from their written tenancy agreement.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

According to Policy Guideline 19

The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

According to Section 16 of the Act The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 45(2) of the Act states; A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

In this case, I find that the subtenants entered into a fixed term tenancy to sublease the rental unit for one year from the original Tenant, who has subsequently become the Landlord of the subtenants. After signing the tenancy agreement I find that the subtenants were obligated and responsible to adhere to the terms of the tenancy agreement, even though subtenant E.R. did not occupy the rental unit, the subtenants are both responsible.

I find that subtenant E.R. was not entitled to end the fixed term lease early and has breached Section 45(2) of the Act.

I accept that the subtenants received the 10 Day Notice on November 12, 2024. I find that the 10 Day Notice was sufficiently served pursuant to Section 88 of the Act. I find that the subtenants were required to pay rent in the amount of \$2,400.00 to the Landlord for July 2024 rent.

As the subtenants only paid \$1,200.00 to the Landlord for July 2024, I find that the Landlord is entitled to compensation for loss of rent in the amount of **\$1,200.00** which is the amount indicated on the 10 Day Notice, pursuant to Section 55 of the Act. As the Landlord does not wish to end the tenancy, I make no finding with respect to if the Landlord is entitled to an order of possession for non payment of rent.

I find that once the Landlord entered into a new agreement with the new occupant to replace subtenant E.R., I find that this changed the nature of the original agreement. I find that the Landlord has not mitigated their loss by renting a E.R.'s room to a different occupant for \$1,000 rather than \$1,200.00, which would have been E.R.'s portion of the rent. As such, I decline to award the Landlord \$200.00 for loss of rent for the proceeding five months.

As the subtenants were not successful with their Applications, I find that they are not entitled to the recovery of the filing fee.

Conclusion

The subtenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted a monetary order in the amount of \$1,200.00 for loss of July 2024 rent. The monetary order should be served to the subtenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 10, 2024

Residential Tenancy Branch